Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JEFFERSON-PILOT LIFE INSURANCE COMPANY, INC.,
Petitioner,

v.

WILLARD WEEMS and JULIA WEEMS,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of Alabama

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether state courts lack jurisdiction over claims brought under the Employee Retirement Income Security Act of 1974 ("ERISA") for breach of fiduciary duty and interference with ERISA-protected rights.

2. Whether the courts are precluded from awarding compensatory and punitive damages in connection with ERISA claims for breach of fiduciary duty and interference with ERISA-protected rights.

3. Whether there is a right to trial by jury of ERISA claims for breach of fiduciary duty and interference with ERISA-protected rights.

PARTIES TO THE PROCEEDING BELOW

Plaintiffs

Willard Weems
Julia Weems

Defendants

Jefferson-Pilot Life Insurance Company, Inc.
A.C. Johnson Trucking Company
A.C. Johnson

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.1, Petitioner Jefferson-Pilot Life Insurance Company, Inc. discloses that it is a corporation, that it is wholly-owned by Jefferson-Pilot Corporation, and that it has no subsidiaries other than wholly owned subsidiaries.

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OPINION BELOW

The opinion of the Supreme Court of Alabama is not yet reported. It is reproduced in the appendices to this petition ("Pet. App.") at pages 1a-20a. The Clerk's notice overruling Petitioner's application for rehearing is reproduced at Pet. App. 21a. The unpublished order of the Circuit Court of Lauderdale County, Alabama, appears at Pet. App. 22a-23a.

JURISDICTION

The judgment below was entered on May 5, 1995, and Petitioner's timely application for rehearing was denied on June 16, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

This case involves §§ 409, 502(a) and (e), and 510 of the Employee Retirement Income Security Act of 1974

("ERISA"), 29 U.S.C. §§ 1109, 1132(a), (e), 1140, which are reproduced at Pet. App. 24a-27a.

STATEMENT OF THE CASE

This is an action under ERISA for alleged breach of fiduciary duty and interference with a participant's ERISA rights. In it, the Supreme Court of Alabama determined that:

- The state trial court had jurisdiction to decide these ERISA claims;
- Under ERISA, Respondents may be entitled to compensatory and punitive damages; and
- Under ERISA, Respondents also have the right to have their claims tried by a jury "because the right to recover compensatory and punitive damages 'leads inexorably to the right of trial by jury.'"

Each of these conclusions is patently wrong. Each is in direct conflict with either the plain language of the statute or the decisions of this Court, the United States Court of Appeals for the Eleventh Circuit, and other Courts of Appeals as well.

Certiorari should be granted and this case should be summarily reversed. In the alternative, this case should be heard with *Varity Corp. v. Howe*, No. 94-1471, *certiorari* granted April 24, 1995, or held and disposed of in light of this Court's decision in that case.

A. Facts

Respondent Willard Weems was a participant in a welfare benefit plan maintained by his employer A.C. Johnson Trucking Company ("Johnson Trucking"). Respondent Julia Weems, Mr. Weems's wife, was also covered by the plan. Plan benefits were provided through an insurance policy issued by Petitioner Jefferson-Pilot Life Ins. Co. ("Jefferson Pilot") to Johnson Trucking. In July 1990, Jefferson Pilot canceled the policy effective

April 30, 1990 because Johnson Trucking had not paid any premiums since February. On two prior occasions, Johnson Trucking had been delinquent in the payment of premiums to Jefferson Pilot, but the policy was not canceled as these delinquencies were later cured. Jefferson Pilot provided Johnson Trucking prior notice of the cancellation, but Johnson Trucking did not inform its employees that coverage had lapsed until August 1, 1990. Jefferson Pilot maintains that all of its actions were well within its rights under the policy.

On June 5, 1990, Mr. Weems was hospitalized with a heart attack. Initially, Jefferson Pilot paid Mr. Weems's medical expenses. However, such payments stopped upon cancellation of the policy, and Jefferson Pilot obtained reimbursement from Mr. Weems's medical providers for amounts previously paid. Mr. Weems resigned from Johnson Trucking effective August 17, 1990. He asserts that since that time he has been unable to obtain medical insurance for his heart condition.

B. Proceedings Below

On January 4, 1991, the Weemses filed suit in state court against Johnson Trucking and related entities alleging state law claims. Jefferson Pilot was added as a party defendant by amended complaint filed on April 16, 1991, Johnson Trucking having ceased operations.[1] Ultimately, the complaint asserted several state law claims, as well as claims for "tortious" breach of fiduciary duty under ERISA. The amended ERISA claims expressly invoked §§ 409, 502(a)(3), and 502(a)(1)(B) of ERISA, 29 U.S.C. §§ 1109, 1132(a)(3), 1132(a)(1)(B). *E.g.*, R. 71. The amended complaint sought compensatory

[1] Upon being served with the amended complaint, Jefferson Pilot removed the action to the United States District Court for the Northern District of Alabama on the grounds that the plaintiffs' claims arose under ERISA. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). The district court remanded to the Alabama state court, having concluded that removal was untimely.

damages for medical expenses, lost wages, emotional distress, and interference with Mr. Weems's right to receive plan benefits, punitive damages, interest, and attorneys' fees. The plaintiffs demanded trial by jury.

After conducting discovery, both sides moved for partial summary judgment. Jefferson Pilot asserted that the state law claims were preempted by ERISA and that the plaintiffs were not entitled to either extracontractual damages or trial by jury. R. 29, 59-60, 76, 96. The plaintiffs sought summary judgment as to the liability of all defendants. R. 61-62. The trial court ruled on the pending motions on March 16, 1993, R. 104-05, denying plaintiffs' motion for summary judgment and holding that all plaintiffs' state law claims were preempted by ERISA. It also struck the jury demand and plaintiffs' ERISA claims to the extent that they sought extracontractual damages. The court certified its order for immediate appeal under Rule 54(b) of the Alabama Rules of Civil Procedure., R. 105, and the plaintiffs timely appealed the trial court's rulings on the ERISA issues to the Alabama Supreme Court.

The Alabama Supreme Court issued its decision on May 5, 1995. It affirmed the trial court's determination that the plaintiffs' state law claims were preempted by ERISA, but parted company with the trial court on the remaining issues. Plaintiffs' federal law claims, according to the court below, "alleged that Jefferson-Pilot (1) had breached fiduciary duties, and (2) had 'interfered with [their] rights to receive ERISA benefits.'" Pet. App. 9a. Relying on this Court's opinion in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), the Alabama Supreme Court held that in such cases the courts, state and federal, are authorized to award extracontractual and punitive damages. Pet. App. 16a-17a (quoting *Haywood v. Russell Corp.*, 584 So. 2d 1291, 1295-98 (Ala. 1991)). The court recognized that its conclusion was contrary to that reached by several other

courts, including the U.S. Court of Appeals for the Eleventh Circuit. *See* Pet. App. 17a.[2]

The trial court's ruling striking plaintiffs' jury demand was also reversed as a necessary consequence of the appellate court's conclusion that legal relief was recoverable. "[T]he right to recover compensatory and punitive damages 'leads inexorably to the right of trial by jury,' as guaranteed by [the Seventh Amendment]." Pet. App. 17a (quoting *Haywood*, 584 So. 2d at 1298). Once again, the Alabama Supreme Court acknowledged that its holding conflicted with Eleventh Circuit law,[3] but noted that it was free to disregard the rulings of the federal court of appeals on matters of federal law. Pet. App. 18a.

Jefferson Pilot timely applied for rehearing, pointing out that, pursuant to § 502(e), 29 U.S.C. § 1132(e), the state courts lack jurisdiction over ERISA claims for breach of fiduciary duty and interference with obtaining plan benefits.[4] Respondents opposed the application for rehearing and argued that "[s]tate courts have concurrent jurisdiction over ERISA matters" pursuant to § 502 (a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). The Alabama Supreme Court overruled Jefferson Pilot's application for

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[2] *Harsch v. Eisenberg*, 956 F.2d 651 (7th Cir.), *cert. denied*, 113 S. Ct. 61 (1992); *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991); *Zimmerman v. Sloss Equipment, Inc.*, 835 F. Supp. 1283 (D. Kan. 1993); *Roberts v. Thorn Apple Valley, Inc.*, 784 F. Supp. 1538 (D. Utah 1992); *accord Novak v. Andersen Corp.*, 962 F.2d 757 (8th Cir. 1992), *cert. denied*, 113 S. Ct. 2928 (1993).

[3] *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990).

[4] Rule 12(h) of the Alabama Rules of Civil Procedure, like its federal counterpart, directs the court to dismiss an action "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter." *See also International Longshoremen's Ass'n v. Davis*, 470 So. 2d 1215, 1216 (Ala. 1985), *aff'd*, 476 U.S. 380 (1986); *Ex Parte Smith*, 438 So. 2d 766 (Ala. 1983).

rehearing without opinion, two Justices dissenting. Pet. App. 21a.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari in this case and correct the egregious errors of the Alabama Supreme Court which threaten to undermine ERISA's civil enforcement scheme. In particular:

- The Alabama Supreme Court's basis for asserting state court jurisdiction conflicts with the express statutory provisions of ERISA.
- The remedies authorized by the Alabama Supreme Court are not available under ERISA for the claims asserted in this case.
- The Alabama Supreme Court's erroneous interpretation of *Ingersoll-Rand* subverts the clear intent of this Court and of ERISA.

This kind of corruption of an important federal scheme by a state court warrants prompt action by this Court.

ERISA is a "comprehensive and reticulated statute," [5] enacted by Congress after years of careful study and debate "to remedy certain defects in the private retirement system." [6] At the time of the statute's enactment, Congress emphasized that "the continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit plans]." [7] Since then, the number of private pension plans alone has more than doubled, and in 1991 some 61 million employees

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[5] *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 361-62 (1980).

[6] H.R. Rep. No. 533, 93d Cong., 1st Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4639.

[7] ERISA § 2(a), 29 U.S.C. § 1001(a).

participated in such plans.[8] In addition, more than 150 million Americans obtain health insurance coverage through employer-sponsored benefit plans regulated by ERISA.[9]

Among Congress's principal objectives in drafting ERISA was the elimination of the conflicting system of state and local regulation then governing the employee benefit field and the substitution of a single federal regulatory scheme.[10] Congress accomplished this goal by formulating detailed federal standards to guide fiduciaries of all employee benefit plans and by providing plan participants and beneficiaries with "six carefully integrated civil enforcement provisions." [11] To ensure that this pervasive federal framework would be preeminent, Congress expressly preempted, with certain narrow exceptions, all state laws that "relate to any employee benefit plan." [12] According to the legislation's Senate sponsor, "the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans." [13]

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[8] Employee Benefit Research Institute, *Questions and Answers on Employee Benefit Issues*, EBRI Issue Brief No. 150, at 11, 12 (June 1994).

[9] U.S. General Accounting Office, *Employer-Based Health Insurance* 1 (Sept. 1992).

[10] *See, e.g.*, H.R. Rep. No. 533, at 12, 1974 U.S.C.C.A.N. at 4650.

[11] *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985).

[12] ERISA § 514(a), 29 U.S.C. § 1144(a).

[13] 120 Cong. Rec. 29933 (1974) (statement of Sen. Williams). *See also New York Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677-78 (1995); *Ingersoll-Rand*, 498 U.S. at 142; *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 99 (1983).

To underscore the importance of federal control in this area, Congress not only established a detailed set of standards and duties to guide fiduciaries, but also vested the federal courts with *exclusive* jurisdiction over suits alleging breach of fiduciary duty and other statutory violations.[14] Congress contemplated that the courts thus vested with exclusive jurisdiction would develop a "federal common law of rights and obligations under ERISA-regulated plans." [15]

Review of the decision of the Alabama Supreme Court is necessary to preserve the enforcement scheme that Congress crafted "with such evident care." *Russell*, 473 U.S. at 147. The decision below is a frontal attack on ERISA's enforcement scheme. By usurping the federal courts' exclusive jurisdiction over these ERISA claims, the decision below undermines the important principles of uniformity that underlie this scheme. The federal courts could not develop a uniform body of federal law if the state courts were free to create common law under ERISA that would conflict with that developed by the federal courts. This danger is highlighted by the decision below, which is directly contrary to the holdings of the Eleventh Circuit. That any errors by the state courts in this field ultimately can be corrected by this Court is of little comfort to those forced to operate under conflicting regimes in the interim.

Moreover, the court below held that ERISA itself provided plaintiffs with the very claims and remedies that it found preempted, including the right to recover legal relief and the right to trial by jury. This result flies in the face of the Court's holdings that (1) individual plaintiffs such as the Respondents here may not recover damages on their own behalf for breach of fiduciary duty

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[14] ERISA §§ 404, 405, 406, 29 U.S.C. §§ 1104, 1105, 1106; ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

[15] *Pilot Life*, 481 U.S. at 56; *accord* 120 Cong. Rec. 29942 (1974) (statement of Sen. Javits).

under §§ 409 and 502(a)(2) of ERISA (*Russell*, 473 U.S. at 144); (2) money damages may not be recovered in connection with a claim for violation of the statute brought under § 502(a)(3) of ERISA (*Mertens v. Hewitt Associates*, 113 S. Ct. 2063, 2068 (1993)); and (3) the remedies expressly provided for in § 502(a) of ERISA are exclusive (*Pilot Life*, 481 U.S. at 54). Not only is the Alabama Supreme Court's decision plainly wrong, but this kind of tinkering with ERISA's enforcement scheme threatens uniformity every bit as much as does the recognition of such claims under state law.

I. STATE COURTS LACK JURISDICTION OVER THE ERISA CLAIMS ASSERTED IN THIS CASE

The Alabama Supreme Court remanded this case to the trial court despite the fact that the ERISA claims asserted here are within the exclusive jurisdiction of the federal courts. Its decision cannot stand.

Section 502(e)(1) of ERISA expressly limits state court jurisdiction of ERISA claims to those brought under § 502(a)(1)(B), which precisely and narrowly defines the nature of the claims authorized thereby: to recover benefits due "under the terms of [the] plan," to enforce participants' rights "under the terms of the plan," or to clarify participants' right to future benefits "under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). This provision specifically does not reach claims for breach of fiduciary duty or other statutory violations. Thus, state courts may determine whether a participant is entitled to benefits under the plan and, if so, the amount of those benefits. But only *federal* courts are authorized to interpret and enforce the substantive provisions of the statute and, in particular, the fiduciary rules and the prohibition against interference with ERISA-protected rights.

The Respondents have stated no claim within the purview of § 502(a)(1)(B). The gravamen of Respondents'

action against Jefferson Pilot is that the Respondents were injured by the insurer's failure to notify them of the status of Johnson Trucking's medical insurance policy—*i.e.*, that premiums were delinquent—and by the retroactive cancellation of the policy. Respondents do not claim to be entitled to benefits under the lapsed policy, but rather seek a monetary recovery to compensate them for, among other things, the medical expenses that they incurred *because* the policy had lapsed. As the court below noted, the ERISA-based claims implicated by these allegations are breach of fiduciary duty and interference with the protected rights. Pet. App. 9a. Such conduct, if proved, violates §§ 404 and 510 of ERISA, respectively, and is redressable as provided in §§ 409 and 502(a).

Without doubt, such claims may be heard only in the federal courts: "Except for actions under subsection (a)(1)(B) of this section, *the district courts of the United States shall have exclusive jurisdiction of civil actions under this title. . . .*" 29 U.S.C. § 1132(e)(1) (emphasis added).[16] Section 404 claims for breach of fiduciary duty are cognizable under § 502(a)(2), which permits an action to be brought "for appropriate relief under section 409." 29 U.S.C. § 1132(a)(2). All other statutory claims, including claims alleging violation of § 510, fall within the ambit of § 502(a)(3). 29 U.S.C. § 1132(a)(3) (equitable relief may be awarded to enjoin or redress "any act or practice which violates any provision of this title").[17]

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[16] Despite the apparently plain language of the statute, at least one other state court has exercised jurisdiction over ERISA claims for breach of fiduciary duty. Thus, in *Suarez v. Food Lion, Inc.*, 398 S.E.2d 60 (N.C. App. 1990), the court, without examining the basis of its subject matter jurisdiction, held that an individual beneficiary could not recover for breach of fiduciary duty.

[17] The issue of whether a claim for fiduciary breach may be brought under § 502(a)(3) as well as under § 502(a)(2) is presented in *Varity Corp. v. Howe*, No. 94-1471, currently pending before this Court.

The Alabama Supreme Court views concurrent jurisdiction under § 502(a)(1)(B) as extending to statutory violations, in addition to claims for benefits. *See* Pet. App. 16a, 19a. By usurping authority that Congress expressly gave to the federal courts alone, the decision below sets a dangerous precedent that threatens to undermine much that Congress sought to accomplish in enacting ERISA.

II. THE COURTS ARE PRECLUDED FROM AWARDING COMPENSATORY AND PUNITIVE DAMAGES TO REDRESS THE ERISA VIOLATIONS ALLEGED IN THIS CASE

As noted above, Respondents allege violations of ERISA's fiduciary standards and the prohibition against interfering with protected rights. ERISA §§ 404-405, 510. *Russell* holds that individual participants and beneficiaries may not recover damages on their own behalf in an action for breach of fiduciary duty under §§ 409 and 502(a)(2). *Mertens* holds that monetary relief—compensatory and punitive damages—may not be recovered in an action brought under § 502(a)(3) for other statutory violations. And *Pilot Life* holds that the remedies expressly provided for in § 502(a) are exclusive. Together, this authority bars recovery of the relief sought by the Respondents in this case and mandates reversal of the decision below.

In *Russell*, this Court squarely held that plan participants may not recover extracontractual damages, compensatory or punitive, on their own behalf in an action for breach of fiduciary duty:

> A fair contextual reading of the statute makes it abundantly clear that its draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary.

473 U.S. at 148. Section 409 of ERISA prescribes the remedies that may be awarded for breach of fiduciary

duty and expressly provides that those remedies run to the *plan* and not to the individual participant who brings the action. *Id.* at 140. In addition, nothing in § 502(a) expressly authorizes the award of extracontractual damages, and no such authorization could be implied. *Id.* at 147-48. To the extent that Respondents seek extracontractual damages for breach of fiduciary duty, therefore, *Russell* forecloses recovery.

Indeed, it is doubtful that individual participants may maintain an action *at all* for breach of fiduciary duty on their own behalf. Section 502(a)(3) authorizes a cause of action for violations of the statute generally, but it is unlikely that claims for breach of fiduciary duty, for which Congress created a specific cause of action in § 502(a)(2), are also cognizable under that general provision. The Court did not reach this issue in *Russell*, but the issue is currently before the Court in *Varity Corp. v. Howe*, No. 94-1471.[18] Should the Court reverse the decision of the Eighth Circuit in *Varity*, Respondents' claim for breach of fiduciary duty must be dismissed in its entirety.

The Respondents' claim for interference with protected rights under § 510 of ERISA fares no better than does their fiduciary breach claim. Claims for violation of § 510 are cognizable under § 502(a)(3). *See Ingersoll-Rand*, 498 U.S. at 143. In *Mertens*, this Court unequivocally held that compensatory and punitive damages are not recoverable as "appropriate equitable relief" under § 502(a)(3). 113 S. Ct. at 2068. Thus, it is clear that ERISA does not, by its terms, entitle Respondents to the relief they seek.

It is equally clear that this Court's ERISA jurisprudence precludes the courts from recognizing causes of action

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[18] As presented in *Varity Corp.*, the issue is "[d]oes [ERISA] § 502(a)(3), 29 U.S.C. § 1132(a)(3), permit individual ERISA plan participants and beneficiaries to sue on their own behalf for alleged breaches of fiduciary duty under ERISA?" Brief of Petitioner at i, *Varity Corp. v. Howe*, No. 94-1471 (filed June 23, 1995).

and fashioning remedies not expressly authorized by the statute. The Court reached this conclusion the first time it examined § 502(a) in Russell:

> The six carefully integrated civil enforcement provisions found in § 502(a) of the statute . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.

473 U.S. at 146 (emphasis in original). The point was forcefully reaffirmed two years later in *Pilot Life*:

> The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive.

481 U.S. at 54. And the Court remained faithful to these principles in *Mertens*, its most recent treatment of § 502(a), in which it noted that "[t]he authority of courts to develop a 'federal common law' under ERISA . . . is not the authority to revise the text of the statute." 113 S. Ct. at 2070 (citation omitted).

The Alabama Supreme Court held otherwise, ignoring *Russell*, *Pilot Life*, and *Mertens*, and relying instead on dictum from *Ingersoll-Rand*. See Pet. App. 15a. The Alabama court understands *Ingersoll-Rand* as expressly authorizing the courts (state and federal) to fashion remedies that are not provided for in ERISA itself. *Id.* at 15a-16a. Any such holding would have effectively overruled *Russell* and *Pilot Life*, since both of those decisions predated *Ingersoll-Rand*. That the Court did not intend this result is confirmed by its failure in *Ingersoll-Rand* to acknowledge that it was overruling those earlier cases and by the Court's continued adherence to the *Russell-Pilot Life* principles in *Mertens*.

Unlike the Alabama Supreme Court, the federal courts of appeals, including the Court of Appeals for the Eleventh Circuit, have given effect to both the letter and the

spirit of this Court's precedents. Thus, for example, in *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819 (11th Cir. 1991), the Eleventh Circuit anticipated *Mertens* and squarely held that "extra-contractual damages are not available under ERISA § 502(a)(3), 29 U.S.C. § 1132 (a)(3)." 920 F.2d at 821; *accord Novak v. Andersen Corp.*, 962 F.2d 757, 759 (8th Cir. 1992) (an award of monetary damages is not "appropriate equitable relief"); *Harsch v. Eisenberg*, 956 F.2d 651, 660 (7th Cir.) ("We will continue to doubt the availability of extra-contractual damages under ERISA until a more plausible signal [than the *Ingersoll-Rand* dictum] reaches us from above."), *cert. denied*, 113 S. Ct. 61 (1992). The state court below was aware of the Eleventh Circuit's view, but declined to follow it. *See* Pet. App. 17a.

Not only is the decision below plainly wrong, but it poses a grave threat to the integrity of ERISA's carefully-crafted enforcement scheme. As far afield from this Court's teachings as the decision below appears, it is not an aberration. *Ingersoll-Rand* has been read by several courts as providing *carte blanche* to award all manner of legal relief in ERISA actions,[19] and the decision below indicates that the confusion has not been put to rest by *Mertens*. At the very least, the decision below subjects the administrators of any benefit plan covering even a single citizen of Alabama to just the sort of conflicting

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[19] *See McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29, 35 (D.D.C. 1991) (Seventh Amendment requires jury trial in ERISA cases where recovery sought is traditional tort remedy, authorized by *Ingersoll-Rand*); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Midland Steel Products*, 771 F. Supp. 860, 861 (N.D. Ohio 1991) (§ 502(a) provides "legal remedies in [§ 510] cases . . . where both legal and equitable issues are presented); *Blue Cross & Blue Shield of Alabama v. Lewis*, 753 F. Supp. 345, 347 (N.D. Ala. 1990) ("[t]his court can read and understand the English language," and *Ingersoll-Rand* provides for recovery of compensatory and punitive damages in ERISA cases).

regulation Congress sought to avoid. *See, e.g., Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 10-11 (1986).

In the decision below, the Alabama Supreme Court misconstrued some of this Court's teachings and ignored others. In addition, the Alabama court knowingly ruled on an issue of federal law in a manner that conflicts with Eleventh Circuit precedent. This Court should grant certiorari and reverse the decision below in order to preserve the important federal interests at stake.

III. RESPONDENTS ARE NOT ENTITLED TO A JURY TRIAL

The conclusion of the Alabama Supreme Court that Respondents' ERISA claims are triable by a jury followed "inexorably" from its conclusion that legal relief was recoverable. Pet. App. 17a. Since the court was wrong about the nature of the relief recoverable, it was also wrong in holding that the Respondents are entitled to trial by jury.

Whether the right to a jury trial exists in ERISA actions is an issue that has been frequently litigated in the lower courts. Resolution of the issue turns on whether the type of relief available is legal or equitable. The Seventh Amendment generally preserves the right of trial by jury "[i]n Suits at common law," U.S. Const., amend. VII, and this Court has instructed that the Seventh Amendment "requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." *Curtis v. Loether*, 415 U.S. 189, 294 (1974). By contrast, where "equitable rights alone [are] recognized, and equitable remedies alone [are] administered," the Seventh Amendment has no application. *Teamsters Local 391 v. Terry*, 494 U.S. 558, 564 (1990) (citation omitted).

As demonstrated above, Respondents are not entitled to recover monetary damages in connection with their ERISA claims. Respondents do not seek a recovery on behalf of their plan and thus, under *Russell*, cannot re-

cover under §§ 409 and 502(a)(2). The Court's decision in *Varity Corp.* will determine whether a claim for fiduciary breach may be maintained on behalf of individuals under § 502(a)(3). But even if such a right is recognized, the remedies available under § 502(a)(3) are limited to injunctions and "appropriate equitable relief," 29 U.S.C. § 1132(a)(3), which do not carry the right to trial by jury. And these same equitable remedies constitute the only relief that may be awarded to redress a violation of § 510, which is also cognizable under § 502(a)(3).

The court below concluded that the Respondents are entitled to a jury trial, but did not do so on the ground that § 502(a)(3) claims are legal in nature. Rather, the court continued under the erroneous assumption that Respondents' claims were brought under § 502(a)(1)(B) and held that a plaintiff may be entitled to a jury trial thereunder. Pet. App. 18a-19a. The issue whether the right to trial by jury exists for § 502(a)(1)(B) actions, which involve enforcement of plan terms, has divided the courts.[20] But that question is not properly presented in

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[20] The weight of authority holds that such claims are equitable in nature and thus need not be tried by a jury. *See, e.g., Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir. 1985); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980); *Blair v. General Motors Corp.*, 895 F.2d 1094 (6th Cir. 1990); *Wardle v. Central States Southeast & Southwest Areas Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 499 U.S. 1112 (1981); *In re Vorahl*, 695 F.2d 318 (8th Cir. 1982); *Spanial v. Gaughan*, 12 F.3d 853 (9th Cir. 1993); *Blau v. Del Monte Corp.*, 748 F.2d 1348 (9th Cir. 1984), *cert. denied*, 478 U.S. 865 (1985); *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525 (11th Cir. 1990). This view is by no means uniform, however, as the Alabama court pointed out. *See, e.g., Sullivan v. LTV Aerospace & Defense Co.*, 850 F. Supp. 202 (W.D.N.Y. 1994); *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 882 (S.D.N.Y. 1990); *McDonald v. Artcraft Electric Supply Co.*, 774 F. Supp. 29 (D.D.C. 1991); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of Am. v. Midland Steel Co.*, 771 F. Supp. 860 (N.D. Ohio 1991); *Gangitano v. NN Investors Life Ins. Co.*, 733 F. Supp. 342 (S.D.N.Y. 1990).

this case, because the Respondents are not suing to enforce the terms of their plan. It is worth noting, however, that the conclusion of the Alabama court that jury trials are available under § 502(a)(1)(B), like its conclusion as to the availability of extracontractual damages, is directly contrary to Eleventh Circuit precedent. *Blake v. Unionmutual Stock Life Insurance Co.*, 906 F.2d at 1526 (§ 502(a)(1)(B) claims are "equitable in nature" and do not carry the Seventh Amendment's guarantee of a jury trial); *accord Chilton v. Savannah Foods & Industries*, 814 F.2d 620 (11th Cir. 1987); *see* Pet. App. 18a (state court need not follow federal court on issues of federal law).

Because only equitable relief may be awarded in connection with Respondents' viable ERISA claims, the Respondents are not entitled to trial by jury.

IV. THIS CASE IMPLICATES AN ISSUE THAT IS CURRENTLY BEFORE THE COURT IN *VARITY CORP. v. HOWE*

On April 24, 1995, the Court granted certiorari to review the judgment of the Court of Appeals for the Eighth Circuit in *Howe v. Varity Corp.*, 36 F.3d 746 (8th Cir. 1994). That case, styled *Varity Corp. v. Howe*, No. 94-1471, in this Court, presents two questions, the first of which reads:

> Does [ERISA] § 503(2)(3) . . . permit individual ERISA plan participants and beneficiaries to sue on their own behalf for alleged breaches of fiduciary duty under ERISA?

Brief of Petitioner at i, *Varity Corp. v. Howe*, No. 94-1471 (filed June 23, 1995). Like the respondents in *Varity Corp.*, Respondents here are individual beneficiaries of an ERISA plan who have sued on their own behalf for breach of fiduciary duty.

In *Varity Corp.*, the plaintiffs alleged a breach of fiduciary duty in connection with their employer's actions in transferring them to a newly created affiliate for the apparent purpose of excluding them from participating in the employer's medical insurance plan. The relief awarded included an injunction requiring the employer to reinstate certain of the plaintiffs as members of the plan. In addition, such plaintiffs were awarded monetary relief measured by the amounts expended in premiums for replacement health insurance and sums "that plaintiffs would have received if they had remained members of the . . . Plan." 36 F.3d at 756. In the dissent's view, recovery for the cost of obtaining replacement insurance coverage constituted "traditional consequential legal damages" and not equitable relief authorized by § 502(a)(3). 36 F.3d at 757 (Hansen, J., concurring in part and dissenting in part). The court of appeals nevertheless upheld the award, concluding that § 502(a)(3) of ERISA authorizes actions by individual participants on their own behalf for breach of fiduciary duty and characterizing the relief awarded by the district court as restitution.

Thus, *Varity Corp.*, will resolve an issue left open in *Russell* and directly implicated in this case—whether an individual participant may sue on his own behalf for breach of fiduciary duty under § 502(a)(3) of ERISA. In addition, it is likely that *Varity Corp.* will address the scope of the available relief, assuming that the cause of action asserted is cognizable under § 502(a)(3). Thus, the outcome in *Varity Corp.* will affect the proper resolution of this case.

CONCLUSION

The Alabama Supreme Court has clearly overstepped the limits of state court jurisdiction over claims under ERISA. Moreover, the decision below is in direct conflict with the rulings of this Court and the Eleventh Circuit on important issues of federal law. The decision exemplifies the extent to which *Ingersoll-Rand* has been misinterpreted by the lower courts and signals the need for definitive guidance from this Court. Finally, the Court's disposition of *Varity Corp. v. Howe* will have a direct impact on this case, since the Respondents here are seeking to maintain an action for breach of fiduciary duty on their own behalf as plan beneficiaries.

For the reasons stated herein, certiorari should be granted and this case should be summarily reversed. In the alternative, this case should be heard with *Varity Corp. v. Howe*, No. 94-1471, or held and disposed of in light of this Court's decision in *Varity Corp.*

Respectfully submitted,

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